Affordable Housing Reference Guide

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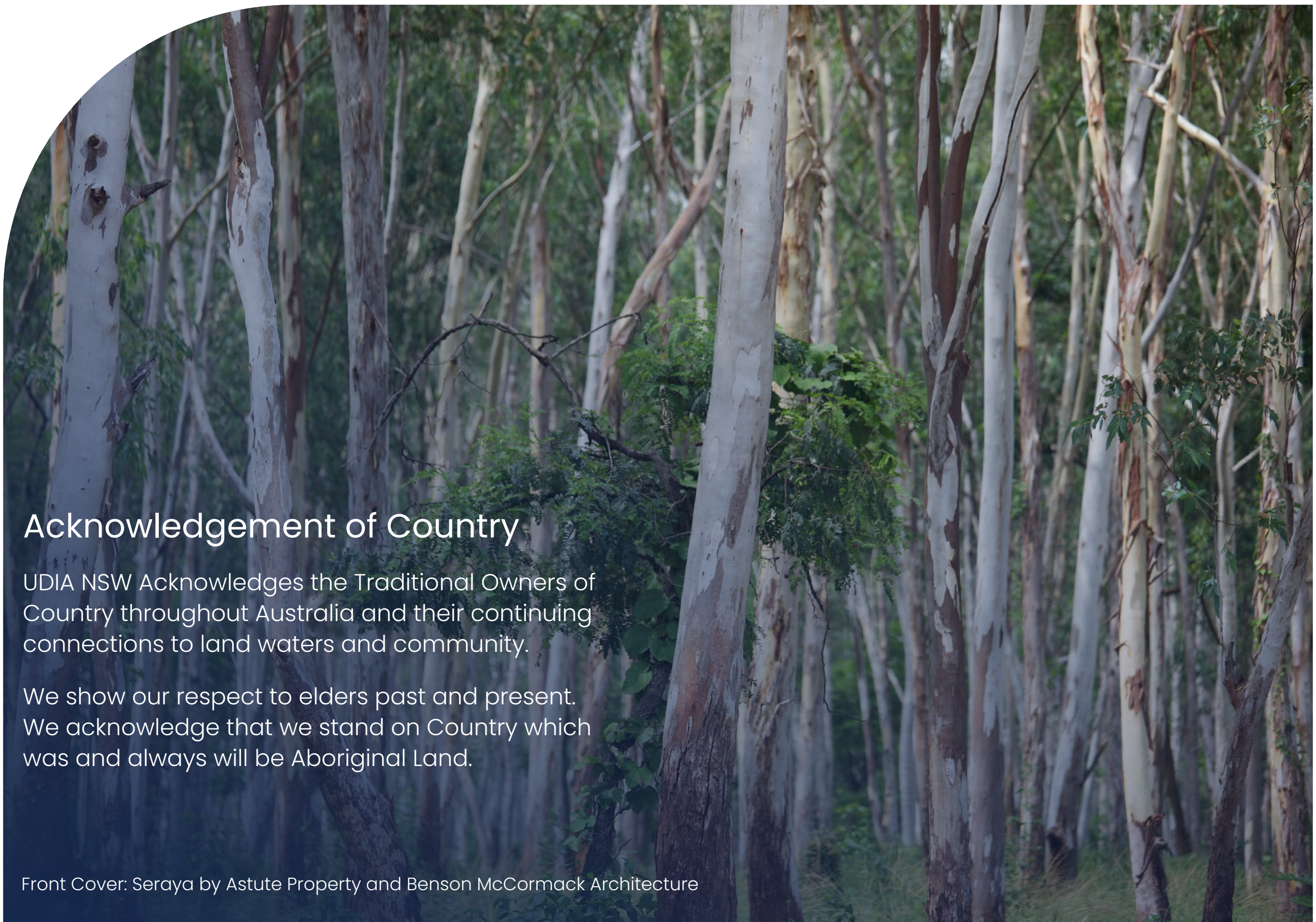
Urban Development Institute of Australia NSW

COMMUNITY HOUSING INDUSTRY ASSOCIATION NSW

UDIA Urban Development Institute of Australia New South Wales

Contents



Acknowledgement of Country

UDIA NSW Acknowledges the Traditional Owners of Country throughout Australia and their continuing connections to land waters and community.

We show our respect to elders past and present. We acknowledge that we stand on Country which was and always will be Aboriginal Land.

Front Cover: Seraya by Astute Property and Benson McCormack Architecture

Introduction

This reference guide has been prepared by Urban Development Institute of Australia (UDIA) NSW with assistance from the Community Housing Industry Association NSW (CHIA NSW). It provides information to assist developers to partner with community housing providers on the delivery of affordable housing.

Its focus is on residential development with a mix of dwelling tenures including market housing and a component of affordable rental housing, including in-fill affordable housing delivered under State Environmental Planning Policy (Housing) 2021.

Affordable housing has many definitions ranging from affordable market housing product to affordable rental housing with regulated rents and management.

This reference guide deals with affordable rental housing which is defined and managed under a legislative framework by a community housing provider.

This reference guide seeks to facilitate and advance investment into affordable housing with information that provides insights into key considerations in investment decisions. This includes information on legislative frameworks, planning definitions, development incentives and requirements, design considerations, tenure and management, and funding and financial considerations associated with the inclusion of a component of affordable rental housing in residential development.

The guide seeks to identify key considerations and inform on the implications of affordable housing in residential development from the initial planning and feasibility stages of development through to the operational life of the development.

How To Use This Document

The Affordable Housing Reference Guide has been developed as a resource to support the initial stages of development planning. Its purpose is to provide essential information early in a project to help developers assess the feasibility of incorporating affordable housing in their projects.

The document doesn’t proclaim to have all information, however, highlights critical information developers will need to evaluate when determining whether affordable housing is a viable component of their development.

Furthermore, the Affordable Housing Reference Guide outlines the key requirements set by consent authorities, helping developers understand the necessary steps for compliance. It also directs users to additional resources and information sources to facilitate deeper exploration into the regulatory and financial aspects of affordable housing. This ensures that developers are equipped with the knowledge needed to make informed decisions and progress with confidence in their projects.

The document is a live document that will be regularly updated as provisions relating to affordable housing change. UDIA NSW will update the document with new information including case studies annually, or as new information is released.

Statutory Framework

The legislative framework around affordable housing comprises:

- planning legislation and instruments; and
- community housing provider legislation.

Planning Legislation and Instruments

The planning legislation and instruments governing the delivery of affordable housing include:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2021
- State Environmental Planning Policy (Housing) 2021
- Affordable Housing Contributions Schemes.

The planning legislation and instruments include provisions for the following aspects of affordable housing which are addressed in the following sections of this reference guide:

- definition of affordable housing
- development incentives and inclusionary zoning
- tenure and management, including household eligibility

Community Housing Providers Legislation

In NSW, registered community housing providers are regulated under the Community Housing Providers National Law (NSW) 2012.

The Housing Act 2001 also supports the delivery of housing assistance by community housing providers.

In addition to this legislation, the Department of Communities and Justice and Homes NSW also set a range of policies that govern the operations of CHPs. For example, the NSW Community Housing Rent Policy sets out requirements for rent policies operated by CHPs providing social housing. Compliance is also enforced through contractual arrangements aligned with different housing supply or management programs funded by the NSW Government, which can vary significantly across program types.

In NSW, affordable housing delivered with financial assistance from the NSW Government, or under state planning policies, is required to adhere to the NSW Affordable Housing Ministerial Guidelines, published by the Department of Communities and Justice. The Ministerial Guidelines are updated annually, and set out policy on eligibility, rent setting and portfolio management. The Ministerial Guidelines aim to ensure that affordable housing is delivered to a range of income groups.

CHPs who are also charitable organisations are subject to additional regulation and requirements, overseen by the Australian Charities and Not-for-Profits Commission. Further information is provided in section 4 of this guide.

What is Affordable Housing?

Section 1.4 of the Environmental Planning and Assessment Act 1979 defines affordable housing as:

"**affordable housing** means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument."

The State Environmental Planning Policy (Housing) 2021 (the Housing SEPP) defines very low income, low income or moderate income households as follows:

(a) the household—

(i) has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW—

(A) very low income household—less than 50%,

(B) low income household—50–less than 80%,

(C) moderate income household—80–120%, and

(ii) pays no more than 30% of the gross income in rent,
or

(b) the household—

(i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and

(ii) pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.

Greater Sydney means the area that the Australian Bureau of Statistics determines from time to time to be the Greater Sydney—Greater Capital City Statistical Area.

National Rental Affordability Scheme has the same meaning as in the *National Rental Affordability Scheme Act 2008* (Cth)

Rest of NSW means the area that the Australian Bureau of Statistics determines from time to time to be the Rest of NSW—Greater Capital City Statistical Area.

Ironbark Apartments by City West Housing

What is Affordable Housing? (cont)

Affordable housing can be a component within any form of residential development. It may be owned by local or state government agencies, community housing providers, charitable organisations, private developers or investors. Where delivered by a private developer under the Housing SEPP, affordable housing is managed by a registered community housing provider. Local councils may also require ownership and/or management of affordable housing to be transferred to a CHP under affordable housing contributions schemes. This reference guide focuses on affordable housing managed or owned by a registered community housing provider.


Gibbons Street, Redfern by SGCH

Income eligibility bands and rent calculation explained

To determine the eligibility bands, the relevant median income for the purposes of the eligibility criteria is the median household income for the Greater Sydney Statistical Division or the Balance of NSW Major Statistical Region (depending on where a household is located) as reported by the Australian Bureau of Statistics annually and usually in the fourth quarter of each year.

For example, the median household income for the Sydney Statistical Division 2023/2024 was $110,800. This means that the following income bands and rent caps apply for Affordable Housing across Greater Sydney:

Income Bands	Household Type	Weekly Income	Weekly Rent Cap (at 30%)
Median Household Income	Moderate Income	$2,131.00	$639.30
80% household income	Low Income	$1,704.80	$511.44
70% household income	Low Income	$1,491.70	$447.51
60% household income	Low Income	$1,278.60	$383.58
50% household income	Very Low Income	$1,065.50	$319.65

Example of the rental eligibility bands for 2023 / 24.

The NSW Affordable Housing Ministerial Guidelines requires Affordable Housing rents to be set at a rate that will not put tenants in housing stress (measured as paying more than 30% of their income on rent). As a minimum, rents must achieve a discount of at least 20% to market rent, based on the median rent for the area in the NSW Government Rent Report.

Where a household's capacity to pay is lower than 80% of market rent, a lower rent must be set to ensure they do not fall into housing stress. In most cases, rent charged by a CHP will not exceed 74.9% of market rent, as this is the threshold at which GST is not applied. However, in some areas, bigger discounts will be required to account for housing stress limits. This should be a key consideration when developing assumptions for Affordable Housing revenues in a feasibility. All information is available at NSW Affordable Housing Ministerial Guidelines 2023-24 | Family & Community Services.

To show how the income limits and discounted market rent setting interplay as an example, the below table shows the market rent, 80% of market rent, the low-income household rent cap and the percentage that market rent needs to be discounted to meet the low income household rent cap across the Hills Shire, Inner West, Bankstown and Liverpool.

The below table illustrates the importance of understanding the local market and the percentage of market rent that can be charged. For example, a 2-bedroom apartment in the Inner West will need to be discounted to 70% of market price to ensure affordable outcomes for a low-income household. The reality is that often the end rent is determined by the tenants means to pay, and this discount could be much less than the upper threshold.

To emphasis the summary, this key consideration highlights the maximum rent is the lessor of:

- 80% of the market rent; or
- 30% of the median household income

	Rents (Weekly)					
	House			Unit		
	2 Bed	3 Bed	4 Bed	1 Bed	2 Bed	3 Bed
Hills Shire - Median Rent	$590	$775	$898	$590	$695	$775
80% of Median Rent	$472	$620	$718	$472	$556	$620
Low Income Household Rent Cap	$511	$511	$511	$511	$511	$511
Low Income Rent % Discount	87%	66%	57%	87%	74%	66%
Inner West - Median Rent	$850	$1,100	$1,413	$595	$730	$1,075
80% of Median Rent	$680	$880	$1,130	$476	$584	$860
Low Income Household Rent Cap	$511	$511	$511	$511	$511	$511
Low Income Rent % Discount	60%	46%	36%	86%	70%	48%
Bankstown - Median Rent	$600	$768	$1,000	$525	$570	$725
80% of Median Rent	$480	$614	$800	$420	$456	$580
Low Income Household Rent Cap	$511	$511	$511	$511	$511	$511
Low Income Rent % Discount	85%	67%	51%	97%	90%	71%
Liverpool - Median Rent	$525	$650	$800	$490	$550	$650
80% of Median Rent	$420	$520	$640	$392	$440	$520
Low Income Household Rent Cap	$511	$511	$511	$511	$511	$511
Low Income Rent % Discount	97%	79%	64%	104%	93%	79%

Note: Rental Prices as at July 2024 (NSW Rent Report)

Definition & Role of Community Housing Providers

Community housing is subsidised rental housing managed by non-government organisations who manage and lease properties to eligible people and families, usually very-low, low and moderate income households. CHPs offer a range of housing products, including social housing, affordable housing, key worker housing, and specialist disability accommodation.

As at 30 June 2024 there were 231 CHPs registered in NSW. The industry manages more than 54,000 properties in NSW. Most CHPs are not-for-profit, and registered with the Australian Charities and Not-for-Profits Commission.

CHPs are both professional asset managers and developers of housing, with a strong focus on long-term strategic asset management. The community housing industry has grown significantly over the past 20 years as CHPs have negotiated planning outcomes and worked with partners to invest in new supply, new initiatives, and improving housing opportunities in all communities.

Since 2012, CHPs have delivered more than 6,000 new homes across NSW, representing an investment of over $2 billion. This includes homes for which CHPs have been the lead developer, homes acquired from other developers, alongside homes managed on behalf of other owners.

As long-term owners and managers of housing, a key focus for the industry is on delivering well-designed and built homes that stand the test of time. CHPs have established asset and development standards that enable them to design and deliver dwellings that provide for effective, long-term property management and deliver cost savings for tenants.

Pemulway Project - Precinct 1 by Deicorps Projects Pty Ltd

Regulatory System for Community Housing Providers

Registered CHPs are highly regulated under the National Regulatory System for Community Housing (NRSCH). In NSW, the NRSCH is independently administered by the NSW Registrar of Community Housing. This effective oversight provides confidence and assurance of a high standard of performance, including with regard to property condition, repairs and maintenance, tenant management, and financial viability. A higher level of oversight is applied to CHPs who regularly undertake development activity.

The regulatory system registers community housing providers in Tiers to enable risk based, proportional regulation. At a high level, the Tiers are generally defined as:

- Tier 1 providers are broadly assessed as operating at a large scale and have ongoing development activity at scale. **These providers face the highest level of performance requirements and regulatory engagement**, therefore providers face the highest level of performance requirements and regulatory engagement.
- Tier 2 **providers**, operate at a moderate scale (50 to 500 tenancies) with small scale development activity. Tier 2 providers face an intermediate level of performance requirements and regulatory engagement.
- Tier 3 providers have a significantly lower number of tenants and assets under management (less than 100 tenancies), and therefore providers face a lower level of performance requirements and engagement.

For all three tiers, the regulatory system manages the risks of development activity to support organisational viability. The scale and frequency of development activity therefore impacts the type and frequency of assessments and reporting required.

The National Regulatory System's website has a searchable database of registered CHPs with filters for Tier, location and not-for-profit status. The database provides contact details as well as the number and type of assets CHPs own and manage.

CHIA NSW's Data Dashboard provides more detail on the location and type of properties managed by not-for-profit CHPs in NSW.

Navali by Urban Property Group

Planning Methods and Provisions

With an aim to increase the provision of affordable housing, together with housing in general, the NSW Government introduced amendments to the State Environmental Planning Policy (Housing) 2021 or the "Housing SEPP". The amendments use both development incentives and inclusionary zoning to encourage an increase in the supply of the affordable housing.

Development Incentives

The amendments to the Housing SEPP, introduced in December 2023, include a scalable bonus up to 30% additional height and floor space where developments include 10-15% affordable housing. In addition, a new assessment pathway was introduced where development will be deemed State Significant if the residential component has a capital investment value of $75 million (in Greater Sydney).

Key provisions of the new policy include:

- a minimum of 10% affordable housing must be provided in order to receive a bonus.
- the height and floor space ratio bonuses essentially double the affordable housing contribution (i.e. 10% affordable housing provides a 20% bonus, while 15% affordable housing provides a 30% bonus).
- the floor space ratio bonus applies to the whole of the development and not just the residential component, while the height bonus only applies to residential flat buildings and shop top housing (i.e. not other buildings on the site).
- affordable housing must be provided for a minimum of 15 years and managed by a Community Housing Provider.
- the Housing SEPP outlines that development needs to be in an accessible area. Refer the Department of Planning, Housing and Infrastructure for the full criteria of 'accessible'.
- affordable housing provided as part of development because of a requirement under another environmental planning instrument or a planning agreement within the meaning of the Act, cannot be counted towards the affordable housing component.
- local affordable housing contribution schemes will continue to apply (i.e. local requirements for Affordable Housing do not contribute to the 10%-15% Affordable Housing provided to achieve the bonuses).

The floor space bonus allowed is equal to double the amount of affordable housing provided, up to a maximum bonus of 30%.

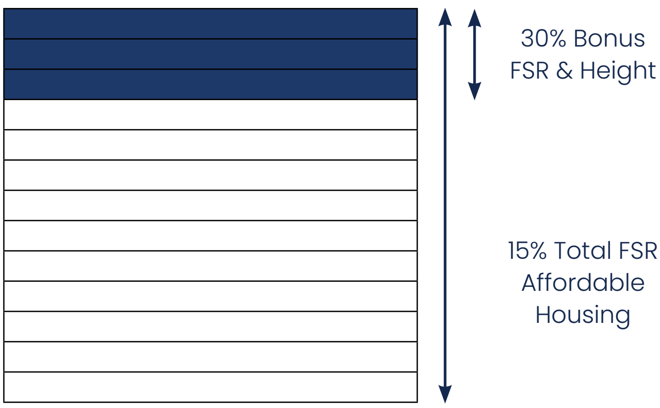
To access the affordable housing bonus of up to 30%, the Housing SEPP requires the affordable housing component GFA is equal to half the proposed bonus. Whilst the majority of the affordable housing component floor space will be floor space within the affordable dwellings themselves, a proportionate amount of the GFA located in other areas of the building (such as common areas, lobbies, internal communal areas), which are equally utilised by affordable and market dwellings, may contribute to the calculation of the total affordable housing component GFA.

Refer below an illustration of how the bonus is applied.

New Bonuses for Affordable Housing

Affordable Housing = Additional FSR/height (as a percentage)/2

Example 1



Inclusionary Zoning

The State Government has been rezoning eight Transport Oriented Development (TOD) precincts, which provide a pathway for State Significant Development and include provisions for affordable housing within an 800 metre radius. These precincts, known as TOD Tier 1 sites, will require up to 18% of affordable housing to be permanently set aside. The exact proportion of affordable homes has been determined through feasibility testing as part of the master planning process.

In addition, the Housing SEPP has introduced a new Chapter 5, specifically focused on TOD. This chapter applies to sites within a 400 metre radius of 37 rail stations, known as Part 2 amendments. It mandates that residential buildings and shop-top housing developments with a gross floor area of 2,000m² or more must provide at least 2% affordable housing, which must be managed by a registered Community Housing Provider (CHP) in perpetuity. This provision is separate from the affordable housing bonus outlined earlier and does not affect the Floor Space Ratio (FSR) bonus, which is capped at 130% of the maximum allowable FSR under local planning rules.

Additionally, the amendment sets conditions that must be met before an occupation certificate is granted for these developments. These include:

- a restriction must be registered on the title of the property regarding the affordable housing requirement
- evidence of an agreement with a registered CHP for the management of the affordable housing must be given to the Registrar of Community Housing, and
- evidence that both conditions have been met be given to the consent authority

Affordable Housing Contribution Schemes

Local councils can create their own Affordable Housing Contribution schemes under Part 4, Division 7.2 of the Environmental Planning and Assessment (EP&A) Act. These schemes may require housing to be dedicated for affordable housing, which could be owned or managed by a Community Housing Provider (CHP). Depending on the specific requirements of the scheme, this guide may help meet those needs.

For example, some schemes include a 1% affordable housing contribution for new residential flat buildings in the Waverley Local Government Area (LGA), or a 5% contribution for residential accommodation in certain parts of the Kensington and Kingsford Town Centres (Randwick LGA).

Low and Mid Rise Apartments

Low and Mid-Rise Housing Policy in NSW aims to increase housing diversity and affordability by facilitating the development of low-rise (like terraces and townhouses) and mid-rise (like apartment buildings) housing in well-located areas, particularly near transport, shops, and services.

The existing in-fill affordable housing bonus provisions will continue to apply to land where the Low and Mid-Rise Housing Policy applies. This means the bonus provisions will apply on top of the non-discretionary standards. This is to encourage affordable housing to be delivered in the low and mid-rise housing areas.

Hiltop Road, Merrylands Project by NSW Land and Housing Corporation

Design of Development

Ownership & Tenure

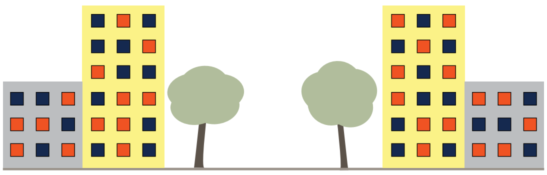
A widely accepted approach to housing delivery emphasises the need for a diverse mix of housing types within precincts. This mix typically includes government-funded social housing, various types of affordable housing, and standard market housing. Strategies for designating affordable housing dwellings may differ by project, with considerations for whether affordability will be maintained in perpetuity or for a defined period (e.g., 15 years).

Project Variability:

Affordable housing can be integrated into various development models, including:

- Entire precincts with low, medium, and high-density residential buildings.
- Multiple apartment buildings.
- Individual apartment buildings.
- Several dwellings within a single building.

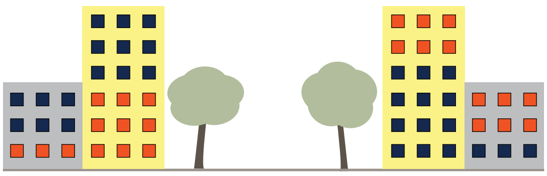
Mixed Tenure Models



Unit by unit

Each tenure is distributed uniformly across an entire development

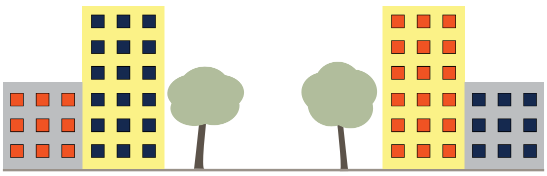
Also called 'salt and pepper' or 'pepper potting'



Floor by floor

Each tenure is clustered in distinct parts of a building

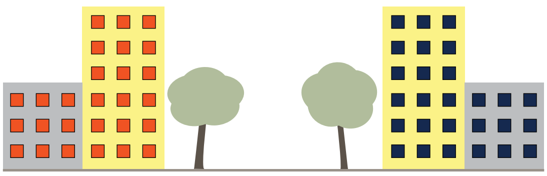
A relevant distinction in the context of large apartment developments



Building by building

Each tenure is provided in separate buildings, but distributed across a development

Potential to integrate design and construction



Block by block

Each tenure is separate as much as possible within a development site

Still more integrated than fully segregated suburbs

Graphic from Hal Pawson, UNSW

Design Considerations

Affordable housing should be fit for purpose and adaptable to meet evolving community needs over time. Each project will have unique requirements based on factors such as:

- **Tenure Model and Mix**
  Is the entire building affordable or only a portion (refer previous section).

- **Future Requirements**
  Design considerations may differ when planning to switch from affordable to market-rate housing after 15 years (e.g. parking spaces, apartment mix, configuration, etc).

- **Communal Open Space**
  High-quality communal open spaces should be accessible to all residents (whether market, affordable or social), fostering a sense of community and enhancing the living experience. These spaces are essential whether provided at the project or precinct level.

- **Guidelines and Standards**
  Apartment Design Guidelines (ADG) should be considered and adhered to where practical, ensuring that developments meet established standards for liveability and functionality.

- **Durability and Maintenance**
  With ownership of affordable housing typically resting with a single entity, a focus on durable and low-maintenance materials is crucial. This includes consideration for:

  - **External Finishes:** Long-lasting facades that require minimal upkeep.

  - **Internal Finishes:** Low-maintenance flooring and fixtures.

  - **Sustainability Considerations:** Effective heating and cooling strategies should be integrated, considering options for mechanical air conditioning, hot water generation, and energy sources including electricity versus natural gas. Prioritising sustainability is vital for reducing operational costs and enhancing overall living conditions.

- **Precinct and Site Layouts**
  Precinct design and site layout may have impacts on overall design outcomes. These considerations should be considered early for the best integration of community housing within the development.

- **Building and Dwelling Design Configurations**
  Ensure the design and layout of the building is prioritising residents and fostering social cohesion. There should be adequate access to basics such as light and cross ventilation as well as other sustainability items through material selection.

- **Discretionary Standards**
  "Discretionary standards" allow councils to vary development standards (like building height or density) in certain circumstances, providing flexibility in the planning system. Ensure discretionary standards are discussed and agreed with the consent authority as early in the planning process as possible, to ensure these are integrated and costed into a project.

- **Amenity**
  It is important that amenity is maximised across a development, and that affordable dwellings are not subject to a lower standard than other dwellings within the development. Ensure amenity, location, aspect and design of dwellings is considered early and is equitable across the development.

Station St, Wickham by Home in Place

Ownership, Tenure & Management

The ownership, rental tenure and management of an affordable housing component in residential development is specified in planning instruments and affordable housing schemes including **Section** 10.7 planning certificates.

CHPs have developed expertise in property and tenancy management as well as designing and constructing purpose-built affordable housing developments. The National Regulatory System **for Community Housing** provides assurance that not-for-profit registered providers are delivering quality outcomes across these service areas.

Ownership

Affordable rental housing may be owned by local or state government, community housing providers, charitable organisations, private developers or investors, and managed by a registered community housing provider.

Private Ownership

Where there is not a requirement to transfer ownership to a public authority or community housing provider, affordable housing may be retained in the ownership of a private entity and bought and sold in the same way as any other real estate property.

However, even where a private entity may retain ownership, there may be covenants/restrictions placed on title relating to the ongoing use of the affordable housing component.

Dedication to a Public Authority

Planning laws and policies may require that the affordable housing in a residential development be dedicated to a public authority, and it remain under their control in perpetuity..

Rental Tenure

Affordable housing to which this reference guide applies is required to be leased at capped rents as described in Section 3 of this Guide, for the period it is required to be retained as affordable housing.

The time periods for which an affordable housing component in residential development must be leased at capped rents varies depending on the circumstances.

Minimum 15 Year Rental

The SEPP (Housing) 2021 requires an affordable housing component to remain in place for **a minimum** of 15 years from the issue of an occupation certificate for the following types of housing development:

Macarthur St, Shortland Project by NSW Land and Housing Corporation

- residential development approved under the incentivising voluntary provisions for affordable housing in Chapter 2 Part 2 Division 1 In-fill affordable housing.
- residential flat buildings by or on behalf of or in joint venture with a social housing provider or public authority approved under Chapter 2 Part 2 Division 5 Residential flat buildings—social housing providers, public authorities and joint ventures.

Minimum 25 Year Rental

The Housing Australia Future Fund (HAFF) requires affordable housing funded under that scheme to have a minimum rental tenure period of 25 years.

Rental in Perpetuity

There are various planning instruments in effect which require an affordable rental housing component of a residential development to be rented as affordable housing in perpetuity.

Management by CHP

CHPs have deep expertise in all areas of tenancy and asset management, including assessment of applications, selecting applicants and allocating appropriate properties, rent setting and rent collection, and supporting tenant and community outcomes through community development and tenant support activities.

Affordable housing delivered under the Housing SEPP is required to be managed by a registered community housing provider. The managing CHP is required to apply the Affordable Housing Ministerial Guidelines.

Evidence of a management agreement with a registered CHP must be given to the NSW Registrar of Community Housing and the consent authority. Any change in the CHP managing the affordable housing are also required to be notified to the Registrar and consent authority within 3 months of the change.

Affordable housing delivered through government programs, including affordable housing contributions schemes, will likely also require management by a CHP.

Strata Schemes

Affordable housing within strata schemes will be subject to the same strata fees and charges as other dwellings. If a developer retains ownership of the affordable housing dwellings, they will be responsible for these fees and maintenance costs.

High strata fees and maintenance costs can negatively impact viability of ongoing management of affordable housing and reduce future leverage potential. These projects may be less attractive for CHPs to manage.

Developers are strongly encouraged to engage early with a CHP to ensure the design of the affordable housing is fit-for-purpose, the needs of future tenants are accounted for, operational costs are reasonable, and to consider management and maintenance arrangements including arrangements for access to shared communal facilities.

Funding and Financial Considerations

CHPs have deep experience with both development feasibilities and financial viability models that incorporate construction and the long-term operation of affordable housing. CHPs have developed robust financial structures and they can access lower-cost debt and equity financing options to support project viability.

Tax Incentives

Tax concessions are available to incentivise the delivery of affordable housing. The Australian Taxation Office (ATO) has ruled that non-commercial supply of accommodation by charities will not attract GST if the rent is less than 75% of market rent. The ATO has set benchmark market rents for NSW, which is what is uses to determine GST status. These figures are updated annually, so providers will need to check with the ATO regularly.

It is recommended that an individual or organisation seeking to deliver affordable housing seek tax advice on what options could be available in their circumstance..

Federal Government Incentives - HAFF

The Housing Australia Future Fund (HAFF) is a Federal Government funding initiative administered by Housing Australia to support the delivery of 20,000 new social homes and 10,000 new affordable homes across Australia over a 5-year period, including housing to support acute housing needs. Successful projects receive co-investment finance in the form of availability payments over a period of 25 years.

Funding is available to registered CHPs, state and local governments or special purpose vehicles which include one or more of these entities.

Funding opportunities change of over time. It is recommended that any individual or organisation seeking to deliver affordable housing investigates investigate federal government incentives as part of early project investigations.

BaptistCare Kitty Doyle Apartments by BaptistCare

Grants

From time to time, local, state or Federal governments may establish grant programs to support the delivery or acquisition of social and affordable housing. Typically, these programs are only open to registered CHPs, or development consortia which include CHPs. It is recommended that any individual or organisation seeking to deliver affordable housing investigates grant funding opportunities as part of early project investigations.

Developer Contribution Concessions

The Environmental Planning and Assessment Regulation 2021 exempts affordable housing from section 7.12 infrastructure contributions levies.

Some, but not all, councils also exempt affordable housing from section 7.11 contributions. In some cases, these exemptions are only applied to affordable housing development undertaken by or on behalf of a CHP or government agency.

Not for Profit Concessions & Benefits

CHPs with charitable status are exempt from GST, land tax and stamp duty. Consequently, not-for-profit CHPs are a cost-effective way to deliver affordable housing. In addition, the recognition of CHPs as private landlords enables tenants to receive Commonwealth Rent Assistance, thereby increasing CHPs' income stream and rent revenue.

Depending on the structure, partnerships with CHPs may be able to leverage these concessions. However, this will not be possible where a CHP's role is limited to property and tenancy management.

Affordable Housing Concessions under Housing and Productivity Contributions (HPC)

Affordable housing is excluded from being required to pay HPC if:

- The affordable housing is provided by or on behalf of a social housing provider (within the meaning of the Housing SEPP), or
- Is required to be managed by a registered community housing provider as a condition of development consent

Contractual Considerations for CHPs and Developers

To successfully deliver affordable housing, effective collaboration between CHPs and developers is required, with strong communication and alignment of goals. It is strongly recommended that contracts play a crucial role in facilitating developers and CHPs navigate the challenges they may face in their collaborations. Contracts can:

- clearly define the roles and responsibilities of each party, ensuring that both developers and CHPs understand their obligations,
- outline how risks will be shared and mitigated,
- specify the financial arrangements, including funding sources, payment schedules, and cost-sharing mechanisms,
- be designed to allow for flexibility and adaptability, accommodating changes in project scope or unforeseen circumstances,
- include provisions to protect intellectual property and maintain confidentiality, and
- include dispute resolution regimes to provide a structured process for resolving issues without resorting to litigation.

By addressing these legal aspects, contracts can provide a solid foundation for successful collaborations between CHPs and developers, helping to overcome many of the challenges they face. The contractual consideration of CHPs and developers are discussed in more detail below.

When a CHP and a developer jointly develop affordable housing, many factors ensure the success and sustainability of the project, including (but not limited to) the following list.

1	Project Alignment	Ensuring both the CHP's mission for affordable housing and the developer's commercial objectives align.
2	Roles & responsibilities	Clearly define the roles and responsibilities of each party to avoid misunderstandings and to facilitate smooth project execution.
3	Stakeholder Engagement	Engaging with local government, community groups, and potential tenants early to ensure the project gains community support and meets local needs. Document who is to lead this work with roles and responsibilities clearly articulated.
4	Taxation Implications	Understanding how tax structures will affect the project, including GST implications, land tax exemptions for CHP, and any tax credits available to the developer. Ensure this is resolved and agreed early.
5	Risk Sharing/ management	Identify potential risks and establish risk management strategies, including insurance requirements and contingency plans. Defining clear responsibilities for financial, operational, and regulatory risks between the CHP and the developer. Appropriate insurance coverage to protect against potential liabilities and unforeseen events that could impact the project.
6	Land Acquisition	If one of the parties doesn't already own the land, decide who will secure land, whether through purchase or long-term lease, and ensuring it's appropriately zoned for development.

7	Development Timeframe	Aligning timelines to accommodate both the developer's construction schedule and the CHP's housing management readiness.
8	Regulatory Compliance	Ensuring compliance with: • Federal, state, and local housing regulations, especially regarding affordable housing quotas, building codes, and environmental sustainability standards; • National Regulatory System for Community Housing (NRSCH) or relevant state regulations to ensure CHPs are well governed and financially viable which can provide additional protection and confidence to investors/developers.
9	Ownership and Control	Clarifying ownership structure of the properties post-construction, whether housing will be held by the CHP, the developer, or sold to a third party.
10	Contractual Agreements	Drafting comprehensive contracts that: • outline the roles, responsibilities, and legal obligations of both parties; • timelines, deliverables, and consequences for non-compliance; • establish a clear process for managing changes to the project scope, timeline, or budget, including how changes will be approved and documented; • establish mechanisms for regular monitoring and reporting on the progress of the project to ensure that any issues are identified and addressed promptly; • include dispute resolution mechanisms to handle conflicts efficiently and minimise project delay.
11	Tenant Eligibility and Management	Affordable housing requires long-term management, including maintenance and tenant relations, which involves specific skills and operational focus. In New South Wales, the State Environmental Planning Policy (Housing) 2021 mandates that the affordable housing component must be managed by a registered Community Housing Provider (CHP). The CHP is responsible for defining eligibility criteria, selecting tenants, and managing tenants after the project is completed. It's important to agree on these variables with stakeholders early to ensure alignment.
12	Design and Building Standards	Meeting both government requirements for affordable housing and developer goals for quality and cost efficiency in building design. Define quality standards and inspection procedures to ensure that the project meets the required specifications and standards. Agree roles and responsibilities for project delivery.
13	Long-Term Sustainability	Incorporating environmental, economic, and social sustainability elements into the project to ensure long-term viability for tenants.
14	Profitability and Affordability Balance	Balancing affordable housing rents to maintain economic viability for the CHP while allowing the developer to achieve a reasonable profit margin.
15	Maintenance and Lifecycle Costs	Considering who will bear the costs of ongoing maintenance and how lifecycle costs will be managed over time, including sinking funds for future repairs.
16	Exit Strategy	Planning an exit strategy for the developer and/or CHP, whether through transfer of ownership, long-term lease agreements, or selling portions of the development.

Contractual Considerations for CHPs and Developers (cont)

Contractual structure depends on the project size, financial capacity, risk tolerance, and long-term goals of CHP and developer. Joint Ventures or PPPs provide shared risk and reward, while others, like Turnkey Development or long-term Leases allow one party to take on a larger share of the project's development or operational duties. The following captures a non-exhaustive list of options for consideration.

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1.	Turnkey Development	The developer handles all aspects of the project and delivers completed housing to the CHP, ready for tenant occupancy. The CHP typically pays for the project in instalments or upon completion.
2.	Joint Venture Agreement	A shared ownership model where the CHP and developer form an SPV to develop the project. Both parties contribute capital, expertise, and resources, with profits and risks shared based on predefined terms. Best for projects where both parties want equal or significant control over decision-making and financial returns.
3.	Development Agreement	A development agreement for a CHP (Community Housing Provider) is a legally binding document outlining the terms and conditions under which a development project, involving the CHP, will be undertaken, ensuring clarity on rights, responsibilities, and obligations for all parties involved.
4.	Build-Operate-Transfer (BOT)	The developer builds and operates the housing project for a set period, generating rental income and managing the property before transferring ownership or operational control to the CHP. Best for CHPs that lack upfront capital but want long-term control of the asset after an initial concession period.
5.	PPP	A formal partnership between the CHP, developer and government where risks, responsibilities, and financial contributions are shared to deliver social and affordable housing. Best for large-scale projects that require significant government involvement and multiple stakeholders.
6.	Long-Term Lease Agreement	The developer retains ownership of the property, leasing it to the CHP for a long-term period. The CHP operates the housing during this time, paying a lease fee to the developer.
7.	Revenue Sharing Agreement	Both the CHP and the developer agree to share the rental income generated from the affordable housing units. The developer receives a portion of the revenue based on the proportion of market-rate or affordable units in the project. Best for projects where the CHP has operational control but the developer wants ongoing revenue from the project.
8.	Property Management Agreement	A contract outlining the terms and conditions for managing a property, including the duties of the property manager, management fees, and the legal responsibilities of both parties. In some instances, it can be a developer that owns the property, and the CHP (or third party) manages the property, in other instances, the CHP owns the property but will be managed by a third party.
9.	Land Lease Agreement	The CHP owns the land and leases it to the developer for a fixed period. The developer builds the housing, and the CHP either receives lease payments or takes control of the property at the end of the lease term. This is not common practice but is noted best for projects where the CHP wants to retain land ownership but does not have the capital to develop the housing themselves.
10.	Co-ownership	Both the CHP and the developer co-own the property. The CHP may own a portion of the affordable housing units, while the developer retains ownership of market-rate units, sharing operational responsibilities or income. Best for mixed-use developments where both market-rate and affordable units are part of the project.

Useful Documents and Web Links

In-Fill Affordable Housing

In-Fill Affordable Housing Practice Note

Guide to Faster Assessment Program for Affordable Housing

Renting Affordable Housing

Provider Search

Community Housing Providers' Responsibilities

Bigge St by NSW Land and Housing Corporation

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